

**IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE**

In re Application of: Huculak, et. al.

Serial No.: 10/671,150

Filed: September 25, 2003

Art Unit: 3739

Examiner: Johnson III, Henry M.

For: "LED Illuminator"

January 26, 2009
Attorney Docket No. 2377 US

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

PRE-APPEAL BRIEF CONFERENCE REQUEST FOR REVIEW

Dear Sir or Madam:

In response to the Final Office Action dated September 26th, 2008, kindly consider this Pre-Appeal Brief Conference Request for Review, which is submitted concurrently with a Notice of Appeal and the required fee.

Listing of Claims

1. (previously presented)A system for illuminating an interior space within an eye, said system comprising:

a cannula having a distal end and a end;

a hollow handle constructed and arranged for mounting said cannula;

said distal end of said cannula being constructed and arranged for insertion into said interior space of said eye;

said proximal end of said cannula being constructed and arranged for connection to said hollow handle;

said distal end of said cannula further including a light emitting diode; a receiver disposed within said hollow handle and electrically connected to said light emitting diode via a wire passing through said hollow handle and said cannula; and

a transmitter disposed external to said handle;

whereby a brightness of said light emitting diode is controlled via a wireless interface between said transmitter and said receiver.

2. (canceled)

3. (canceled)

4. (canceled)

REMARKS

Claim 1 is pending and rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,436,035 issued to Toth *et al.* (*Toth*) in view of U.S. Patent No. 6,211,626 to Lys *et al.* (*Lys*). Applicants respectfully traverse the rejection and requests reversal of the rejection for at least the reason that each and every element of the claimed invention is not shown in the cited combination of references.

Claim 1 recites a “system for illuminating an interior space within an eye” with “said distal end of said cannula further including a light emitting diode; a receiver disposed within said hollow handle and electrically connected to said light emitting diode via a wire passing through said hollow handle and said cannula; and a transmitter disposed external to said handle; whereby a brightness of said light emitting diode is controlled via a wireless interface between said transmitter and said receiver.” The Examiner concedes that *Toth* includes wireless control for a hand-held surgical light source nor an LED source mounted at a distal light delivery end of the device. But the Examiner asserts that this is shown in *Lys*, in that *Lys* describes both the use of LEDs in an ophthalmic illuminator (col. 68, lines 33-35) and the use of remote controls with wireless signals for control of the light devices.

Contrary to the Examiner’s assertion, *Lys* does not show the configuration recited in the claims. Far from teaching wireless control of an LED in a surgical handpiece, *Lys* teaches the opposite. The only description of the connection between the LED and a control mechanism in a surgical handpiece (particularly with respect to the cautery device in Fig. 93B) involves a wired connection. *Lys* states “The power and data signals to the LED system 2144 are carried through a LED cable 2148 affixed to the superior aspect of the handheld wand 2138. The LED cable 2148 joins with the Bovie power cord 2152 at the proximal end of the instrument to form a single united device cable 2150.” (col. 65, lines 10-15). The wireless “signal-generating device” (also sometimes referred to as a “signal generator”) cited by the Examiner is only described with references to other embodiments outside of surgical handpieces. There is no suggestion to use wireless control in a surgical handpiece, much less a hand-held optical illuminator specifically, and the only relevant teaching of *Lys* teaches away from such an application

CONCLUSION

For at least the foregoing reasons, Applicants respectfully submit that the cited references fail to teach each and every element of Claim 1 and thus fail to render Claim 1 obvious. Accordingly, Applicants respectfully request reversal of the rejection and allowance of Claim 1.

The Commissioner is hereby authorized to charge any fees or costs associated with this request or the associated Notice of Appeal and to credit any excess payments to Deposit Account No. 010682.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Jonathan E. Prejean', is written over a horizontal dotted line.

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